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Attorneys for Defendant, First Unum Life Insurance Company

By:


Steven P. Del Mauro

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LISA PRICE,

Plaintiff,

vs.

FIRST UNUM LIFE INSURANCE
CO.,

Defendant.

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CIVIL ACTION NO. 08-3709

CIVIL ACTION – NOTICE OF REMOVAL

PLEASE TAKE NOTICE that the undersigned attorneys for defendant, First Unum Life Insurance Company ("First Unum"), petition this Honorable Court for an order pursuant to 28 U.S.C. § 1441, et seq., removing to the United States District Court, Southern District of New York, a matter instituted in the Civil Court of the City of New York, County of New York, bearing index number 014986 CVN 2008.

PLEASE TAKE FURTHER NOTICE that a copy of this removal petition has been filed with the Clerk of the Civil Court of the City of New York, County of New York, thereby effecting removal pursuant to 28 U.S.C. § 1446(b).

PLEASE TAKE FURTHER NOTICE that by effecting removal of this civil action, First Unum reserve all rights to raise any and all defenses available under the Federal Rules of Civil Procedure including, but not limited to, FED. R. CIV. P. 12.

PLEASE TAKE FURTHER NOTICE that in support of this notice of removal, First Unum shall rely upon the following:

1. On or about April 1, 2008, Lisa Price ("Price") filed a summons with endorsed complaint in the Civil Court of the City of New York, County of New York, bearing index no. 014986 CVN 2008. Annexed hereto as Exhibit "A" is a copy of the summons with endorsed complaint which constitutes all process, pleadings and/or orders served upon and received by First Unum to date within the meaning and intent of 28 U.S.C. §1446.

2. First Unum was served with the endorsed complaint on April 2, 2008. First Unum first had knowledge of the institution of suit and of the basis for the removal of this civil action upon service of summons with endorsed complaint on April 2, 2008. Removal is therefore timely under 28 U.S.C. §1446(b) in that the filing of the within petition occurred prior to the expiration of thirty (30) days from the date First Unum was served with summons with endorsed complaint.

3. The Court's review of the summons with endorsed complaint will reveal that the nature and substance of plaintiff's cause of action is identified as "damage caused to person, failure to pay insurance claim and breach of contract." The insurance claim and contract reference in the summons with endorsed complaint is a policy of group long term disability insurance issued by First Unum to Price's employer, Mt. Sinai Medical Center. The policy of group long term disability insurance funds, in whole or in part, an employee welfare benefit plan within the meaning and intent of the Employee Retirement Income Security Act of 1974, as

amended, ("ERISA"), 29 U.S.C. §1001, et. seq. As such, the gravamen of the summons with endorsed complaint relates to and concerns Price's claim for benefits under an employee welfare benefit plan within the meaning and intent of ERISA.

4. Given the applicability of ERISA, pursuant to 29 U.S.C. § 1132(e) United States District Courts are provided with subject matter jurisdiction over all actions relating to employee welfare benefit plans, including the plan made the subject of the action instituted by Price. Furthermore, pursuant to 29 U.S.C. §1144, the terms and provisions of ERISA totally preempt all state court causes of action. Removal is therefore appropriate under and pursuant to 28 U.S.C. § 1441(a) and (b). See Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
Attorneys for Defendant, First Unum Life Insurance Company

By: 

Steven P. Del Mauro, Esq.

Dated: April 18, 2008
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EXHIBIT "A"

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. 014986 CVN 2008

LISA PRICE

- AGAINST -

FIRST UNUM LIFE INSURANCE CO.

Plaintiff

Defendant

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SUMMONS WITH

ENDORSED COMPLAINT

* BASIS OF VENUE IS:
PLAINTIFF'S ADDRESS

PLAINTIFF(S) ADDRESS:

LISA PRICE, 1952 FIRST AVE, APT 3L, NEW YORK NY 10029
To the above named defendant(s):
FIRST UNUM LIFE INSUR
99 PARK AVENUE
6TH FL
NEW YORK NY 10016SUMMONS

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York, County of New York, at the office of the Clerk of the said Court at 111 Centre Street in the County of New York, City and State of New York, within the time provided by law as noted below,* and to file your answer to the summons with the Clerk. Upon your failure to answer, judgment will be taken against you for the sum of \$2652 with interest thereon from 09/19/07, together with the costs of this action.

Date: April 1, 2008

By: Jack Lopez

Chief Clerk, Civil Court

ENDORSED COMPLAINT

The nature and substance of the plaintiff's cause of action is as follows:

DAMAGE CAUSED TO PERSON
FAILURE TO PAY INSURANCE CLAIM
BREACH OF CONTRACT*Note to the Defendant

A) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within ~~TWENTY~~ days after such service; or

B) if the summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed ~~THIRTY~~ days after the proof of service of this summons is filed with the Clerk of this Court within which to appear and answer.

C) Following CPLR 321(a) corporations must be represented by an attorney.

- NOTE TO THE SERVER OF THE SUMMONS -

The person who serves the Summons should complete the Affidavit of Service and file it in the Clerk's Office (New York County) as soon as possible after service of the Summons on the defendant.

PLAINTIFF'S CERTIFICATION
(SEE NYCRR, SECTION 130-1.1a)

SIGN NAME

X

PRINT NAME

Lisa Price
LISA PRICERECEIVED
APR 2 2008
Ck

REC

APR 03 2008

LAW

RECEIVED